

MARICOPA COUNTY FLOOD CONTROL DISTRICT BOARD OF DIRECTORS MINUTE BOOK

January 3, 2002

The Board of Directors of the Flood Control District of Maricopa County, Arizona, convened at 9:00 a.m., January 3, 2002, in the Board of Supervisors' Auditorium, 205 W. Jefferson, Phoenix, Arizona, with the following members present: Don Stapley, Chairman; Fulton Brock, Vice Chairman; Andy Kunasek; Jan Brewer; Mary Rose Wilcox (entered late); Fran McCarroll, Clerk of the Board and Shirley Million, Administrative Coordinator. Also present: David Smith, County Administrative Officer and Paul Golab, Deputy County Attorney. Votes of the Members will be recorded as follows: (aye-no-absent-abstain)

MINUTES

Motion was made by Director Brewer, seconded by Director Kunasek, and unanimously carried (4-0-1) to approve minutes of meeting held December 5, 2001.

PERSONNEL AGENDA

Motion was made by Director Brewer, seconded by Director Kunasek, and unanimously carried (4-0-1) to approve the Personnel Agenda. (List on file in the Clerk of the Board's Office.)

EASEMENTS, RIGHT-OF-WAY DOCUMENTS

Motion was made by Director Brewer, seconded by Director Kunasek, and unanimously carried (4-0-1) to approve easements, right-of-way documents, relocation assistance, and appraisal services contracts under \$5,000 per resolution FCD 87-12; escrow instructions per resolution FCD 87-13; license procedures and fee schedules per resolution FCD 97-02; and payment of tax notices per resolution FCD 97-07 for Flood Control purposes. (ADM1910)

Guadalupe Highline Canal Drainage Project (per Resolution No.: FCD 95-12)

Item GHC-65-TIE-1, 2 and 3, Temporary Ingress and Egress Easement and Agreement for Flood Control Purposes from Absolute Storage LLC, an Arizona limited liability company to the Flood Control District of Maricopa County for the sum of \$500.00.

Northern - Orangewood Basin No. 3 (per Intergovernmental Agreement FCD 98-017)

Item NO3-1PDE, NO3-2PDE, Permanent Drainage Easement and Agreement for Flood Control Purposes from the Flood Control District of Maricopa County to the State of Arizona, acting by and through its Department of Transportation for the sum of \$95,604.30.

CONTRACTS FOR ON-CALL VALUE ENGINEERING SERVICES

Motion was made by Director Brewer, seconded by Director Kunasek, and unanimously carried (4-0-1) to approve two contracts for On-Call Value Engineering Services between the Flood Control District of Maricopa County (District) and the following consultants:

- Parsons Brinckerhoff Quade & Douglas, Inc., Contract FCD 2001C031 (C69020535)
- Rider Hunt Levett & Bailey (AZ) LLC, Contract FCD 2001C032 (C69020545)

Each contract is effective for two years from the date of its execution, or until the expenditure of \$100,000 whichever occurs first. Total dollar amount for both contracts will not exceed \$200,000. The District and

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the consultants will mutually agree to a detailed scope of work for each work assignment prior to the commencement of any work. A not-to-exceed fee will be negotiated for each work assignment prior to notice to proceed with each assignment. This negotiated fee will be in accordance with the rates included as Exhibit B to the contracts. (C69020525ZZ)

~ Supervisor Wilcox entered the meeting ~

INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF PARADISE VALLEY AND THE CITY OF PHOENIX

Item: Approve Intergovernmental Agreement (IGA) FCD 1999A026 among the Flood Control District of Maricopa County (District), the Town of Paradise Valley (Paradise Valley), and the City of Phoenix (Phoenix) for cost sharing the utility relocations, rights-of-way acquisition, construction, construction management, and for operation and maintenance of the Doubletree Ranch Road Drainage Improvement Project, #580, (Drainage Project) which includes the Drainage Project and non-flood control related Street Improvements. The Drainage Project is estimated to cost \$10,300,000, for which the IGA provides for a 60% District (estimated at \$6,180,000) and 40% Paradise Valley (estimated at \$4,120,000) cost share. The street improvements are estimated to cost \$2,700,000 for which the IGA provides for 100% Paradise Valley funding. The Drainage Project and the Street Improvements total \$13,000,000. The IGA provides for Paradise Valley to be responsible for operation and maintenance of the constructed Drainage Project and Street Improvements, and for Phoenix to provide their rights-of-way and drainage easements necessary for the Drainage Project. The District will provide construction management services at a rate of 8% with an estimated value of \$960,000 which is included in the \$13,000,000 total cost. Paradise Valley will reimburse the District an estimated \$3,410,000 at award of construction and an estimated \$3,410,000 at completion of construction. Expenditures are contingent upon Board of Director's approval of the District's FY 2002-2003 CIP budget. The Doubletree Ranch Road Drainage Improvement Project, #580, will be included in the District's Five-Year CIP Program beginning in FY 03 with a total estimated project cost of \$13,000,000. (C69020702)

Chairman Stapley said that public testimony on this matter would be limited to 10 minutes for each side and asked that each speaker try to not repeat previous points made for the side they support in order to conserve time.

He indicated that there were a number of elected officials in attendance and recognized them prior to calling the first speaker. They included Mayor Ed Lowry; Vice Mayor Dan Schweiker; Council members Ed Winkler and Ginny Simpson; former mayors Joan Horne and Kent Wick, all of the Town of Paradise Valley and State Representative Barbara Leff. Shirley Long, a member of the Flood Control District Advisory Board was also present.

Mike Ellegood, Chief Engineer and General Manager of the Flood Control District, was present as was Project Manager Scott Vogel and Dr. Bing Zhao, both of the District Office. Mr. Ellegood spoke and gave a slide presentation on the different facets of a proposed IGA (Intergovernmental Agreement) for the Doubletree Ranch Road Flood Control Project along Indian Bend wash. His report covered six issues: cost sharing, utility relocations, acquisition of necessary rights-of way, construction, construction management and operation and maintenance of the facility upon completion. He indicated that the watershed covers approximately four square miles in the Town of Paradise Valley. He reported that there have been several 10-year and 100-year storms, notably in 1972 and 1976 and 1991, that caused

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flooding and property damage along the drainage channel and that future damage could increase because of the continued influx of new residents and homes being built in the area.

The necessity of the project is being challenged by a group of residents but Mr. Ellegood said the District's internal independent review studies, using the newest state-of-the-art techniques (Flow 2-D) which give projected storm paths and water depths, all show this construction to be needed and necessary to protect the residents and the Town. He indicated that these studies had ascertained that this was indeed a regional project with runoff waters from the Phoenix Mountain Preserve carrying down the Indian Bend Wash and affecting areas as far as away as Scottsdale.

Mr. Ellegood said the town initially requested such a project in 1994 and one was approved by the District's Prioritization Committee in 1994. The Flood Control District authorized a feasibility study in 1995 and an IGA for design and right-of-way acquisition. In 1997 they gathered information about a 100-year storm-drain system but it was determined to be too costly at \$33 million, and would have required too much right-of-way acquisition within the town. The District redesigned the project and made other project adjustments utilizing underground storm drains. The new plans were completed in 1998 and these were approved by the Advisory Board. In 2002 this same body twice (in February and May) denied approval for a revised and improved version of the construction and IGA which had retained a 70-30 cost split between the District and Town.

In today's request the Town has assumed a greater portion of the construction and the cost split is 60-40. With an estimated total cost of \$10.3 million, the District's share would be \$6.2 million and the Town's share at \$4.1 million plus all the cost of street improvements associated with it, for approximately \$2.7 million of additional costs. Completion of this project will remove 145 homes from the danger of storm damage and reduce the possible damage in an additional 40 homes. Mr. Ellegood and his staff request approval by the Board.

Chairman Stapley asked what effect the additional new homes built during the past 20 years has had on the distribution of the water flow from nearby mountains.

Mr. Ellegood replied that, "Development has increased the possibility of flooding and development has increased the potential damage that flooding will do." He said that construction of homes, block walls, and hardened surface or paved streets block the flow and affect the concentration of floodwaters and also increase flood velocities. He maintained that with any kind of development there needs to be a comprehensive drainage plan installed as part of the infrastructure, the same as a road system is planned and installed in new housing developments.

Chairman Stapley confirmed the District's findings by asking, "The six million dollars the Flood Control District is being asked to spend would be a wise investment, a prudent investment, a conservative investment, considering the value of the real estate that would be protected?"

Mr. Ellegood replied, "Absolutely, there are millions of dollars worth of property up there and it is statistically possible, over the 50-year life of a project like this that we could have five such flooding events. Considering the reduction of damage and insurance claims to real property the District does believe it to be a wise and prudent investment."

Director Brock said, "We live in the desert and our budget for flood control is over one million dollars a week, so isn't it natural for county residents to ask, 'should this Board allocate that much money for flood

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control when we live in the desert?' This, and several other points are questions that the public and we, as governing Board members, should be asking." However, he said he knew there really was no good answer to such questions because weather prediction is still very inaccurate and no one knows when flood protection will be needed. He made the point that in the desert, structures built by neighbors can dramatically affect one's property, and property that had always been problem-free may suddenly become at risk. He said that the dramatic growth impacting all areas of the Valley calls for future diligence and comprehensive planning guidelines to avert disastrous results in the future. He also mentioned the recent efforts of municipalities and the County to work together to share the cost of these regional projects. He believes that cost sharing is the best direction to take.

Director Brewer said that this issue has been around for the five years she has been on the Board and there were many legitimate arguments, pro and con, to be made for it. She indicated that she had received a lot of literature and information alleging that the so-called 100-year floods Mr. Ellegood cited were caused by stopped-up storm drains and inadequate infrastructure having been put in place prior to the influx of property owners.

Mr. Ellegood said the District had considered these factors and had found them to be aggravating but not decisive. He said it had been a combination of factors that indicated that this installation should be made.

Director Brewer asked Mr. Ellegood why he, as Flood Control Director, was disagreeing with his Advisory Board's recommendation. He replied, "The Advisory Board is largely a lay board. There are two engineers on the Board but for the most part they are citizens who were all fully lobbied by people opposing the project. Lobbied so heavily, that many members of the Advisory Board, in conversations with him later, felt that the majority of the community opposed the project and asked him, "why are you imposing this project on a community that doesn't want it?" He stated, "Whether or not it is opposed, does not obviate the need for the project. The laws of physics...you can not negotiate." He reiterated that the department believes there is a technical and legitimate need for a drainage structure to be put in place in the town of Paradise Valley to mitigate flooding. He indicated the disagreement with the Advisory Board was on technical grounds and not with their overall wisdom and help to the District. He said that the Board members had been lobbied so repeatedly and at all hours, that many later stated they were "tired of the whole thing and just wanted it to go away."

Director Brewer asked where the funds would come from to move this project up on the calendar since future projects were already in position and available funds allocated for them.

Mr. Ellegood said some would be postponed or reallocated for a later date. Other projects would be slowed down so this project could be completed and in place as soon as possible because another 10-year flood is overdue. He added that if this project is approved construction could start as early as July 2002.

Director Brewer asked if those projects that would be detained had been identified and if so, which ones were included. He cited several including: acquisition of some properties along the Agua Fria River; slowing down construction timing on the Bethany Home Road outfall; and a similar project along the Elliott Basin. The Director pointed out that two of those were in her district. He said that projects shift back and forth constantly due to difficulties encountered with IGAs, environmental clearances, slow approvals and right-of-way acquisitions.

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Director Wilcox asked if the Advisory Board had a chance to see all the modeling that had been presented today when they rejected the project. She commented that it is rare for Directors to act in opposition to an Advisory Board recommendation.

Mr. Ellegood replied that the Advisory Board had seen a work-in-progress version with less depth in May 2001, but at that time the Board had almost unilaterally decided they no longer wanted this project to come before them as they considered it closed because they had heard it once and rejected it and did not want to hear it all again. He felt the intense lobbying had helped to sway them to this decision.

Director Kunasek said he had talked with the Advisory Board member from his District, who is a civil engineer and who had always seen the need for this to be built but whose primary concern, which prompted his "no" vote, had been with the cost-sharing ratios and the amount and kinds of things the County was being asked to pay for. Director Kunasek said the shift to a 60-40 ratio was more in tune with negotiations being conducted by the County today, and placed this project in more of a regional scenario rather than a local one.

A number of citizens both in favor and in opposition were present for this matter. Those in support included the applicant, Heather Kinkade-Levario, representing Presnell Associates; Stephen Bobbett, representing Anthem Arizona; Ed Lowry, Ed Winkler, Virginia Simpson, Andrew Miller and Dan Schweiker, representing the Town of Paradise Valley; Joan Horne, former mayor of Paradise Valley; residents Jeffrey Jorgenson, representing Camelback HOA #4; Bill Perkins; Derrick Johnson; O'Dell Keil; Robert Duckworth; William Harbecke, Marsha Darre; JoAnne Harbecke; Ellen Keil; Kent Wick and Neil Peters. Those present in opposition included Shirley Long, a member of the Flood Control Advisory Board and citizens Phil Smith; Cliff Svoboda; Paul Manera; Jeff Cook; Helen Harold; John Amory; Lisa M. Cook; Jeffrey J. Cook; Roger E. Wilcox, M.D.; Eleanor Wilcox; Nancy Wilcox; George Dopp; Elaine Wicox; Lilian Danelski; Berkeley Danelski; Randy Ridder; Charles C. Blacknell; Liz Clendenin; Helen Blacknell; Vicki Svoboda; Jane Cole; and Bonsal Glascock.

At this time, 10 minutes was allowed for the speakers who were in opposition:

Phil Smith, citizen, said he bought his home in the area, which has a basement, three years earlier. It was built in 1977 and he stated that there were no signs in his basement that it had ever been flooded. He said he has a Ph.D. and had used models in his work and so was familiar with them. He reminded the Board that the weather is predicted by using models, "and you know how accurate the weather forecast is." He said that models are based on certain assumptions and that he could change the picture they have been shown completely just by changing the assumptions. He suggested leaving the models and going back to the data. He said, "In 1995, 2,000 surveys were sent out and these show that exactly six homes were damaged, so this is basically what we're talking about, six homes." He remarked that in only the last three days the opposition had collected 145 cards for Chairman Stapley and 144 for Director Kunasek opposing the project. He also presented 161 petitions signed by people living on the street and said that 74% of them are opposed to the project. He said, "I don't know what's moving this project forward. It's certainly not business logic and it's not common sense." He asked why the town was continuing to push this project when the people who live on the street don't want it. He said that the facts do not support the project and do not support spending \$10 million of taxpayer money on it.

Cliff Svoboda, citizen, took issue with three things the Board is being asked to do: 1. Overturn the conclusions of the Advisory Board and to completely dismiss their many hours of deliberation, analysis and evaluation on this matter. He said this would set a precedent, seriously diminishing the value of the advice and counsel that is expected from these members. 2. Discount several important phrases in the

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lexicon of common sense, "nonessential" and "of questionable value." These were used by Advisory Board members in the interrogatory sessions concerning Doubletree. 3. Elevate the importance of this project and cause it to precede other important projects. He said, "There is no money in the Capital Improvement Program (CIP) for Doubletree. On a relative 100-point basis showing CIP importance, Doubletree scored 53, putting 22 other projects before it. You are being asked to return to your own constituencies and tell them you voted to underfund or completely unfund the projects that would directly benefit them. I cannot imagine you doing even one of these three things, let alone all of them." He asked that this project be rejected.

Paul Manera, citizen, said that in the reported reference to 145 homes that would not be flooded after completion of this project, there was no documentation that those homes had ever been previously flooded. The major concern with a 10-year flood, which has 2 inches of rain falling in a 24-hour period, is how fast the water falls. He indicated that the same amount can fall without any flooding as a result if the rain falls slowly and steadily instead of a cloudburst.

The end of the first 10 minute period was announced at this point.

Director Brewer said that as a matter of courtesy she felt that Shirley Long, a member of the Advisory Board who had signed up to speak in opposition, should be allowed to do so. This was agreed to and another minute was added to the time.

Ms. Long expressed her concern that the Board of Directors would approve a matter that the Advisory Board had rejected not once, but twice. She said that nothing had changed and no additional data had been presented that would alter her vote. In between the Board's two "no" votes the members had been heavily lobbied and they finally determined to trust the experts. "In this case, those experts happen to be the people who live in the area who would be directly affected by the project," she stated. "They said overwhelmingly, that this project isn't needed: That there would be no flooding problem if the town of Paradise Valley would keep the washes clear: That if Doubletree Road needs to be repaved it is the town's responsibility and not the Flood Control District's." She said that those in opposition, "are taxpayers who don't want to see their tax money wasted. Good government should be responsive to its citizens and approving this project is not good government." She asked the Board to question the excessive price tag, the cost-share split and the price tag for a 10-year flood plan when it is a 100-year flood plan that is needed before they take a vote on the matter.

Director Kunasek said that several references had been made stating that this project will only address a 10-year flood event and asked Mr. Ellegood if that was accurate.

Mr. Ellegood said, "It will provide flood protection for a 10-year event, it will provide flood conveyance on Doubletree Ranch Road itself for the 100-year event. So, in the case of a 100-year event some properties will still be in harm's way but Doubletree Road itself will not flood." The plan is to lower Doubletree Road approximately 1½ to 2 feet along the length of the project.

11 minutes was allowed for those wishing to speak in favor of the project:

Mayor Ed Lowry of Paradise Valley was the first speaker. He said that because of the opposition the town had commissioned a study to see what could be done with the washes running through town and the ditches along Doubletree Road. He said that their independent study had confirmed the conclusions drawn by the Flood Control District staff. He explained that the opposition was mostly from residents living on Doubletree Road and they didn't want to have to live with the construction mess. He indicated

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that this project would not only benefit those residents but also a 480 home, four-mile-square area in the town. He said that studies indicate that those residents not living on the road are supporting the project 4-1. All the previous town councils for the past 10 years have supported this project along with four former mayors who have gone on public record in support of it. The current council has twice voted unanimously to support it and those members who supported it were overwhelmingly reelected in the last election, which had the largest turnout ever recorded for the town. He supported cost sharing because of the water flow from portions of the Phoenix mountains into the town of Paradise Valley and reiterated that it really is a regional problem. He felt the cost-share formula in the IGA being considered was reasonable, fair and appropriate and thanked the Directors and the Flood Control District for their hard work and dedication in ascertaining the facts and in finally bringing this to a conclusion.

Dan Schweiker, Vice Mayor of Paradise Valley (P.V.), said that the town already has plans to rebuild Doubletree Ranch Road and they don't want to do it twice. "By combining flood control with road improvement that the town has already budgeted for we will be saving taxpayer dollars." He explained that the amount the town is asking for this project is only a fraction of the more than \$15 million they have paid into the Flood Control District. He stated that the town has held over 17 meetings within the town about the Doubletree project and that residents have been involved in the process since the beginning. He mentioned that not everyone who has been flooded is willing to admit it for fear of adversely affecting the resale value of their homes. He stated that the P.V. town council, the City of Phoenix, the Scottsdale School Board, which runs Cherokee School in P.V., and many homeowner associations support this project.

Bill Perkins, citizen, said he has lived just south of Doubletree Road since 1968 and has watched the flooding that has occurred over the years. He stated that most of the people in the town are new and do not realize the significance of what water can do during the cyclical rains in Arizona. He explained that the Town of Paradise Valley evolved very slowly over the years and, unlike more modern communities in the area, there had been no development master plan for it or there surely would have been a flood control plan included in it. He agreed that it was definitely a regional problem. He indicated that the residents were all taxpayers and that a portion of those taxes go into the Flood Control District's coffers. He said that many residents would like help with the regional problem that impacts their town with every heavy rain and he asked for approval.

Derek Johnson, citizen, lives one lot south of Doubletree in the center of the project. He said he awoke one morning to "the squish of feet hitting water-sogged carpeting because several rooms had flooded in my house and the yard was under 10 inches of water. There is definitely a drainage problem in the Doubletree area." He indicated his belief that the project does enjoy the popular support of a majority of residents. He asked the Directors to support the "true majority who want this project done by voting yes."

O'Dell Keil, citizen, lives one lot removed from Doubletree. He said that when he was moving into his house his neighbor across the street told him "I'll have to show you the video I have of your house with two feet of water running through it." He remarked that he had filed a petition with hundreds of names of those in favor of this project with the Town Council. He asked for approval from the Board.

Bob Duckworth lives within the project's boundaries in a 35-home homeowners association which, he said, is often locked in by floodwaters. He said there is definitely a problem, "we get a lot of rain and we can't get out." He urged approval of the project.

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Ms. Joan Horne, former mayor of Paradise Valley, said she served in that office during the 1992 10-year flood and from the traffic into her office afterwards there were definitely more than six people who experienced damage. She said the Cherokee School had been cut off by the water and she clearly remembered frantic parents who could not reach their children and the kids who could not leave the school to get home. She indicated that despite the fact that there had not been a recent flood it will happen again and she urged the passage of this request so protection would be in place when it happens.

Chairman Stapley said that time was up for this portion of the interaction.

Director Kunasek remarked that he drives to work down Tatum Blvd. every day and it had long appeared to him that Phoenix has funneled what water they could out of the mountains and focused it right at the Doubletree Ranch Road turnoff. He asked if there were checks in place to make sure another developer won't do a similar irresponsible action that will affect people living downstream. He asked why Phoenix would have approved that drainage plan without completing a full drainage system to the Indian Bend Wash.

Mr. Ellegood said that this was a very key point and one of his top priorities had been to develop area drainage master plans and watercourse master plans for every drainage area and water course in the county to try to avoid those kinds of problems. He said the area mentioned was a "Poster child of the kind of thing we face, where one community says, 'well, it doesn't bother us we'll just shove it off into the next community.' Watersheds do not recognize political boundaries," he said.

Chairman Stapley stated that one of his greatest frustrations is that "we continually seem to end up paying for the sins of our forefathers who didn't take these kinds of issues into account. It's the same out in the East Valley and in the West Valley in many instances, where regional planning didn't take place and hopscotch development created these kinds of hotspots and problems with floodwaters."

Director Brewer said, "Being a stickler for process I move that we re-refer Doubletree Ranch back to the Advisory Board."

The motion died for lack of a second.

Motion was made by Director Brock, seconded by Director Kunasek, and unanimously carried (5-0) to approve the Intergovernmental Agreement (IGA) FCD 1999A026 among the Flood Control District of Maricopa County (District), the Town of Paradise Valley (Paradise Valley), and the City of Phoenix (Phoenix), for cost sharing the utility relocations, rights-of-way acquisition, construction, construction management, and for operation and maintenance of the Doubletree Ranch Road Drainage Improvement Project, #580.

Director Brewer asked to explain her vote. She said she had received a lot of information on this matter and she believes in listening to the Advisory Boards and taking their advice. However, she also knows that this Board of Directors looks to those people in town government who were elected to represent a community to know what is best for that community. She added that she knew that Directors Stapley and Kunasek would never do intentional harm to anyone or any place. She said she voted "aye" based on the fact that they too had been elected by those citizens and have represented them conscientiously. She said her motion to refer the matter back to the Advisory Board had solely been motivated by her belief in process.

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Director Wilcox said the debate had made this a very difficult issue and she knew that the members of the Flood Control Advisory Board had taken a very close look at this before rejecting it. She indicated that the modeling that had been done and comments made by current and former town officials showed her that this truly was a regional issue and as a regional government she felt this Board had no recourse but to approve it. She also indicated that she would not have approved it with the original 70-30 split, and welcomed the movement by the town to agree that even though it was regional the town was willing to participate to a greater degree in order to benefit that region.

Chairman Stapley thanked those who came to the meeting on both sides saying that he had spoken to many of them personally and was sorry that there had not been time to allow all those wishing to speak to do so. He said he had worked hard to understand the issue and to come to the right decision on it. In addressing those who had been in opposition he said that their input had not gone unnoticed and they had served a very useful purpose and made the project meaningful, but he truly believed that the right decision had been reached.

MEETING ADJOURNED

There being no further business to come before the Board, the meeting was adjourned.

Don Stapley, Chairman of the Board

ATTEST:

Fran McCarroll, Clerk of the Board